

UNITED STATES OF AMERICA,)
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 V.)
)
 KRISTEN DOUGLAS WELTER,)

1. Mr. Welter currently awaits sentencing in two different cases: 1:12CR123-1 and 1:12CR399-1. In this motion, he seeks to withdraw his plea of guilty to the charge in 1:12 CR399-1.
2. On March 27, 2012, Mr. Welter was indicted , in case # 1:12CR123-1, on one count of possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He pled guilty to this charge on May 7, 2012, pursuant to a plea agreement.
3. On March 26, 2013, Attorney Ames Chamberlin was initially appointed to represent Mr. Welter, and represented him until his motion to withdraw was granted on April 3, 2013.
4. On November 1, 2012, the United States Attorney's office for the Middle District of North Carolina filed a single-count Bill of Information, in case #1:12CR399-1, against Mr. Welter, charging that on or about April 6, 2009, continuing up to and

including on or about March 19, 2012, in Cabarrus County, North Carolina, Mr. Welter possessed child pornography, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and (b)(2).

5. On November 20, 2012, Mr. Welter pled guilty, pursuant to a written plea agreement, to the information. The Court accepted the Defendant's plea of guilty. Sentencing has been scheduled for May 30, 2013.
6. The presentence report which addressed both charges (1:12CR123-1 and 1:12CR399-1) was disclosed to the parties on January 2, 2013. Mr. Chamberlin submitted objections to the presentence report on behalf of Mr. Welter on June 27, 2012. The Defendant's Position of Defendant with Respect to Sentencing Factors was filed with the Court on March 29, 2013. The Government filed the Government's Position with Respect to Sentencing Factors on March 27, 2013.
7. On March 18, 2013, Mr. Chamberlin filed a motion to withdraw as attorney of record, based on the fact that Mr. Welter informed him that he wished to withdraw his plea of guilty to the possession of child pornography charge. On April 3, 2013, the Court granted Mr. Chamberlin's motion to withdraw. On April 4, 2013, the undersigned was appointed to represent Mr. Welter.
8. The undersigned has filed a motion to obtain the transcripts of the change of plea and motion to withdraw, and as of the date of this motion, has not received them. The undersigned has reviewed the discovery, met with the FBI agents, and has met with Mr. Welter on several occasions.
9. Mr. Welter has requested that the undersigned counsel prepare and file a motion to withdraw his plea of guilty for the reasons set out specifically below:

- a. Mr. Welter asserts that prior to the entry of his plea, he did not have an opportunity to review the discovery, specifically the forensic evidence of the search of the hard drives and information concerning the file structure and the location of the purported child pornography on the hard drives.
 - b. Mr. Welter asserts that at the time he entered his plea, he was not informed of the date of the offense, specifically that it occurred on April 6, 2009.
 - c. Mr. Welter asserts that he did not read the factual basis or the bill of information prior to entering his plea of guilty, nor was it read or explained to him by counsel.
 - d. Mr. Welter has advised counsel of his belief that he is not guilty of this charge.
10. Rule 11(d) of the Federal Rules of Criminal Procedure provides that, prior to the imposition of sentence, “a defendant may withdraw a plea of guilty...(2) after the court accepts the plea, but before it imposes sentence, if: (B) the defendant can show a fair and just reason for requesting the withdrawal.”¹ It is the Defendant’s belief that the above-listed reasons constitute “fair and just reason[s],” and that he should be allowed leave to withdraw his plea of guilty to the charge in 1:12CR399-1.

WHEREFORE, the undersigned respectfully requests that the Court grant a hearing concerning the motion to withdraw Mr. Welter’s plea of guilty.

¹The factors to be considered in making that determination are set forth in *United States v. Moore*, 931 F.2d 245, 248 (4th Cir. 1991)

Respectfully submitted, May 2, 2013.

/s/ Lisa S. Costner

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